

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No. 07-328(PAM)

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	PLEA AGREEMENT AND
)	SENTENCING STIPULATIONS
GREGORY JOSEPH JAUNICH,)	
)	
Defendant.)	

The United States of America and Gregory Joseph Jaunich, (hereinafter referred to as the "defendant") agree to resolve this case on the terms and conditions that follow. This plea agreement binds only the defendant and the United States Attorney's Office for the District of Minnesota. This agreement does not bind any other United States Attorney's Office or any other federal or state agency.

1. **Charges**. The defendant agrees to plead guilty to Count 14 of an Indictment which charges the defendant with mail fraud in violation of Title 18, United States Code, Section 1341.

2. **Factual Basis**. During 2003 and 2004 Gregory Jaunich was the manager of Shaokatan Power Partners, a Minnesota LLC (SPP) which had a Power Purchase Agreement to sell wind energy power to Northern States Power.

On September 25, 2003, Mr. Jaunich received from an SPP employee meter readings for power produced by the SPP wind turbines

of 13, 800 kilowatt hours and 6,200 kilowatt hours, respectively.

On September 25, 2003, Mr. Jaunich instructed SPP employees to bill NSP for 1,843,667 kilowatt hours, which was an estimate.

Mr. Jaunich provided this estimate to the employees knowing it was not based on actual production.

Before November of 2004 Mr. Jaunich became aware that one of the two SPP turbines was on the ground and not producing power.

During 2003 and 2004 Mr. Jaunich knew there was a high probability that the power SPP billed for had not in fact been produced, and despite his obligation to do so, he did not investigate to determine the true numbers.

On November 4, 2004, Mr. Jaunich caused employees of SPP to mail an invoice to NSP billing NSP for 707,871 kilowatt hours. This billing was based on an estimate derived by Mr. Jaunich, not an actual meter reading.

The total loss to NSP as a result is between \$200,000 and \$400,000.

All in violation of 18 U.S.C. § 1341.

3. **Waiver of Pretrial Motions**. The defendant understands and agrees that he has certain rights to file pre-trial motions in this case. As part of this plea agreement, and based upon the concessions of the United States within this plea agreement, the defendant knowingly, willingly, and voluntarily gives up the right to file pre-trial motions in this case.

4. **Statutory Penalties.**

The parties agree that Count 14 of the Indictment carries a statutory penalty of:

- a. a term of imprisonment of up to 20 years; and
- b. a criminal fine of up to \$250,000.

The parties further agree that the count of conviction includes the following statutory penalties:

- a. a term of supervised release of three years;
- b. a special assessment of \$100.00, which is payable to the Clerk of Court prior to sentencing; and
- c. assessment of the costs of prosecution (as defined in 28 U.S.C. §§ 1918(b) and 1920).

5. **Revocation of Supervised Release.** The defendant understands that, if he were to violate any condition of supervised release, he could be sentenced to an additional term of imprisonment up to the length of the original supervised release term, subject to the statutory maximums set forth in 18 U.S.C. § 3583.

6. **Guideline Calculations.** The parties acknowledge that the defendant will be sentenced in accordance with 18 U.S.C. §§ 3551 and 3553. The Court will determine the advisory guideline range. The parties stipulate to the following guideline calculations:

- a. Base offense level. The base offense level is determined by U.S.S.G. § 2B1.1. With a loss between \$200,000 and \$400,000, the base offense

level is level 19.

- b. Specific offense characteristics. The parties agree that no chapter 3 enhancements apply.
- c. Acceptance of Responsibility. The government agrees to recommend that the defendant receive a full reduction for acceptance of responsibility. However, the defendant understands and agrees that this recommendation is conditioned upon the following: (i) the defendant testifies truthfully during the change of plea hearing, (ii) the defendant cooperates with the Probation Office in the pre-sentence investigation, (iii) the defendant commits no further acts inconsistent with acceptance of responsibility, and (iv) the defendant complies with this agreement. (U.S.S.G. §3E1.1). The parties agree that other than as provided for herein no other Chapter 3 adjustments apply.
- d. Criminal History Category. Based on information available at this time, the government believes that the defendant's criminal history category is I. This does not constitute a stipulation, but a belief based on an assessment of the information currently known. Defendant's actual criminal history and related status will be determined by the Court based on the information presented in the Presentence Report and by the parties at the time of sentencing.
- e. Guideline Range. The parties believe that the adjusted offense level will be 16. With a criminal history category of I, the Sentencing Guidelines range would be 21-27 months imprisonment.
- f. Fine Range. If the adjusted offense level is 16, the fine range is \$5,000.00 to \$50,000.00. (U.S.S.G. § 5E1.2). The defendant understands that the government will recommend that the Court impose a fine at the top of the fine guideline range.
- g. Supervised Release. The Sentencing Guidelines require a term of supervised release of at least two but not more than three years. (U.S.S.G. § 5D1.2).

- h. Departures and Variances. The defendant reserves the right to make a motion for departures and/or variances from the applicable guideline. The government reserves the right to oppose any such motion.

7. **Discretion of the Court.** The foregoing stipulations are binding on the parties, but do not bind the Court. The parties understand that the Sentencing Guidelines are advisory and their application is a matter that falls solely within the Court's discretion. The Court may make its own determination regarding the applicable guideline factors and the applicable criminal history category. The Court may also depart from the applicable guidelines. If the Court determines that the applicable guideline calculations or the defendant's criminal history category is different from that stated above, the parties may not withdraw from this agreement, and the defendant will be sentenced pursuant to the Court's determinations.

8. **Restitution.** The defendant understands and agrees that the Mandatory Victim Restitution Act, 18 U.S.C. § 3663A, applies and that the Court is required to order the defendant to make restitution to the victims of his crime. There is no agreement as to the amount of restitution. The defendant understands and agrees the Court may order him to make restitution to any victim of his scheme regardless of whether the victim was named in the indictment.

The defendant further agrees that restitution will be due and payable immediately at time of sentencing.

9. **Complete Agreement.** This is the entire agreement and understanding between the United States and the defendant. There are no other agreements, promises, representations, or understandings.

Date:

FRANK J. MAGILL, JR.
Acting United States Attorney

BY: JOHN R. MARTI
DAVID M. GENRICH
Assistant U.S. Attorneys

Date:

GREGORY JOSEPH JAUNICH
Defendant

Date:

JON HOPEMAN, Esq.
MARNIE FEARON, Esq.
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